was ignorant of this illness and out of the jurisdiction on business when the judgment by default was given, and that he did not learn of it in time to open the default. *Held*, that the petition is not demurrable. *Howell* v. *Ware & Harper*, 66 S. E. 884 (Ga., Sup. Ct.).

Equity will not enjoin the enforcement of a judgment, unless there is a defense not available at law, or unless the judgment was obtained by fraud, surprise, or accident. See *Kersey* v. *Rash*, 3 Del. Ch. 321. Absence of counsel, making unavailable a meritorious defense, is, however, a recognized ground for equitable jurisdiction. *MacCall* v. *Looney*, 96 N. W. 238 (Neb.). But the client must have been free from negligence. *Shields* v. *McClung*, 6 W. Va. 79. So if other competent counsel might have been employed, equity will not intervene. *Crim* v. *Handley*, 94 U. S. 652. Moreover, any laches of counsel is chargeable to the client. *Jones* v. *Leech*, 46 Ia. 186. *Contra*, *Gideon* v. *Dwyer*, 17 N. Y. Misc. 233. Hence if the defense had not been made ready for presentation, or if the absence was due to negligence or if there was another, though inferior, attorney of record in the case, equity refuses to give relief. *Mock* v. *Cundiff*, 6 Port. (*Ala.*) 24; *Bellocq & Ostheimer* v. *Allen*, 2 McGloin (La.) 66; *Powell v. Stewart*, 17 Ala. 719. Mistake, however, may be a cause for equity to interfere. *Weed* v. *Hunt*, 76 Vt. 212. And sudden illness is clearly a sufficient excuse for failure to appear. *Hiller & Co.* v. *Cotton & Co.*, 48 Miss. 593. Since the accident in the principal case was unaccompanied by any fault on the part of counsel or client, there is a proper basis for equitable jurisdiction. See 22 HARV. L. REV. 600.

JUDGMENTS — EQUITABLE RELIEF — FALSE RETURN OF SERVICE IN MECHANICS' LIEN PROCEEDINGS. — Judgment was rendered by default in an action to foreclose a mechanic's lien, and the property sold to A, the lienholder. Although the constable's return showed that process had been duly served on B, the owner, B brought a bill in equity against A to compel a reconveyance, alleging that he had not been served with notice of the proceedings, and that A had no rightful claim. *Held*, that A must open his common-law judgment and permit B to defend. *Mierke* v. *Sebecke*, 74 Atl. 977 (N. J., Ct. Ch.).

Equity will relieve against a judgment at law obtained without due service of process, if it appears that a good defense would have been available. See *Crafts* v. *Dexter*, 8 Ala. 767; *Jeffery* v. *Fitch*, 46 Conn. 601. The better rule, followed in most jurisdictions, is that the officer's return is not conclusive of due service, but may be rebutted even in the absence of fraud on the part of the former plaintiff. *Owens* v. *Ranstead*, 22 Ill. 161; *Ridgeway* v. *Bank of Tennessee*, 11 Humph. (Tenn.) 523. *Contra*, *Taylor* v. *Lewis*, 2 J. J. Marsh. (Ky.) 400. There is no reason against applying the same rule to a judgment in a mechanics' lien proceeding. Such a judgment is frequently said to be *in rem*. See *Porter & Co.* v. *Miles*, 67 Ala. 130, 133. In one sense, this is true, since the judgment is directed against the property and declares the existence of a lien thereon. But it is not binding upon the whole world. *McKim* v. *Mason*, 3 Md. Ch. 186. If the owner of the land is not made a party and served with process, his rights are not concluded by the judgment. *McCoy* v. *Quick*, 30 Wis. 521, 527; *Burnham* v. *Raymond*, 64 N. Y. App. Div. 596; *White* v. *Chaffin*, 32 Ark. 59. The New Jersey statute requires mortgagees also to be joined. GEN. STAT. N. J., TIT. MECHANICS' LIEN, § 34. *Cf. Fleming* v. *Prudential Insurance Co. of America*, 19 Colo. App. 126. Even if the judgment were strictly *in rem*, constructive notice to the world by publication would have been necessary. *McKim* v. *Mason*, *supra*; *Martin* v. *Darling*, 78 Me. 78; *Woodruff* v. *Taylor*, 20 Vt. 65, 76.

LEGACIES AND DEVISES — PARTICULAR INSTANCES OF CONSTRUCTION — ABSOLUTE GIFT FOLLOWED BY QUALIFYING CLAUSES. — A testator left his residuary property on trust for all his children who should be living at his death and reach twenty-one years, as tenants in common. There was a later proviso that